COURT OF APPEALS
DECISION
DATED AND FILED

September 13, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-3328-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID W. OAKLEY,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Manitowoc County: FRED H. HAZLEWOOD, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. David W. Oakley appeals from judgments convicting him of three counts of failing to support his children, *see* WIS. STAT.

§ 948.22(2) (1997-98),[1] as a repeat offender, and from a postconviction order denying his challenge to his sentence and a probation condition. On appeal, Oakley challenges proceedings relating to the withdrawal of a previous plea agreement and a condition of probation. He also alleges that a new factor warrants resentencing. We reject these claims and affirm.

¶2 Oakley was originally charged with nine counts of failing to support his nine children, who have four different mothers. The information charged seven counts of failing to support seven of these children. Although Oakley entered into a plea agreement relating to these charges, the State moved at sentencing to withdraw the plea agreement. The court granted the motion to withdraw.[2] Thereafter, Oakley entered into a subsequent plea agreement under which he entered no contest pleas to three counts of failing to support his children. The other counts were dismissed but read-in for sentencing. The State agreed to cap its sentence recommendation to a total of six years on all counts; Oakley was free to argue for a different sentence.

¶3 The court accepted the plea agreement and sentenced Oakley to three years in prison on the first count, imposed and stayed an eight-year term on the two other counts, and imposed a five-year term of probation consecutive to the prison sentence. As a condition of probation, the court barred Oakley from having any additional children until he could show the court that he had the means to support them and had been consistently supporting the children he already had.

[1] All references to the Wisconsin Statutes are to the 1997-98 version.

[2] The reasons for this turn of events are not relevant to our disposition on appeal.

¶4 Postconviction, Oakley challenged this condition of probation and alleged a new factor warranting resentencing: a Dane county circuit court judge had held that it was unlawful to transfer inmates to out-of-state prisons, as had happened to Oakley. The court rejected these arguments. Oakley appeals.

¶5 Oakley argues that the circuit court erroneously granted the State's plea withdrawal motion and that he did not waive this claim of error when he entered no contest pleas as part of a subsequent plea agreement. We disagree. Oakley's decision to enter into a subsequent plea agreement, which reduced the counts against him from seven to three, waived his right to challenge matters relating to the first plea agreement. A valid no contest plea waives all nonjurisdictional defects and defenses, including alleged violations of constitutional rights. *See* ***State v. Lechner***, 217 Wis. 2d 392, 404 n.8, 576 N.W.2d 912 (1998).[3]

¶6 Furthermore, as part of the proceedings relating to the subsequent plea agreement, Oakley acknowledged that he was waiving the right to appeal the demise of the first plea agreement. In light of the foregoing, we do not address Oakley's claims relating to the demise of the first plea agreement.

¶7 We turn to Oakley's claim that a new factor required resentencing. Oakley moved the circuit court to modify his sentence because his transfer to an out-of-state facility was contrary to a decision of a Dane county circuit court which held that such transfers were unlawful. Oakley also contended that his

[3] Oakley does not contend that the colloquy relating to the subsequent plea agreement was deficient.

transfer defeated the court's intention of having him support his children while he was incarcerated through a work-release privilege.

¶8 Oakley's arguments fail for several reasons. First, the decision of the Dane county circuit court was reversed by the Wisconsin Court of Appeals. *See* ***Evers v. Sullivan***, 2000 WI App 144, No. 00-0127. In denying Oakley's sentence modification motion, the circuit court correctly recognized that a decision of one circuit court does not have precedential value for other circuit courts of this state.

¶9 The circuit court also stated that it was aware at sentencing of the possibility that Oakley would be transferred out of state. The transfer is not a factor of which the circuit court was unaware at the time of sentencing and therefore is not a new factor. *See* ***State v. Kaster***, 148 Wis. 2d 789, 803, 436 N.W.2d 891 (Ct. App. 1989).

¶10 The circuit court did not contemplate that Oakley would support his children while he was incarcerated. In its sentencing remarks, the court perceived incarceration as serving other goals, such as deterring other parents from failing to support their children and to punish Oakley for failing to support his children. The court noted that while incarcerated, Oakley would not "be in a position to pay any meaningful support for these children." Oakley did not show a new factor warranting sentence modification.

¶11 We turn to Oakley's challenge to the condition of probation that bars him from having additional children until he shows the court that he has the means to support them and has been consistently supporting the children he already had. Oakley argues that this condition of probation is not reasonable or appropriate and

violates his state and federal constitutional rights relating to privacy and procreation.

¶12 The circuit court rejected Oakley's postconviction challenge to this condition. The court reiterated that Oakley was unable to support his current children and unlikely to be able to fully support them in the future. The court reasoned that barring Oakley from procreating was rationally linked to the crimes he committed, failure to support his children, and that this served the public's interest in avoiding additional Oakley offspring whom Oakley would not support. As the court succinctly noted, "[Oakley's] crime is entirely related to his fathering of children he is not inclined to support." The court observed that Oakley's rehabilitation would not "be eased by additional family obligations."

¶13 A condition of probation may impinge upon a constitutional right as long as the condition is not overly broad and is reasonably related to the defendant's rehabilitation. *See* ***Krebs v. Schwarz***, 212 Wis. 2d 127, 131, 568 N.W.2d 26 (Ct. App. 1997). Probation conditions are within the sentencing court's discretion. *See* ***State v. Nienhardt***, 196 Wis. 2d 161, 167, 537 N.W.2d 123 (Ct. App. 1995).

¶14 In ***Krebs***, the defendant, who was convicted of sexually assaulting his daughter, was prohibited from entering into a sexual relationship with another adult unless his probation agent approved. *See* ***Krebs***, 212 Wis. 2d at 130-31. The court held that this provision was rationally related to Krebs's rehabilitation, was not overly broad and merely restricted, rather than eliminated, a constitutional right of privacy. *See* ***id.*** at 131-32.

¶15 Similarly, Oakley's condition of probation does not prohibit him from engaging in sexual activity. It merely prohibits Oakley from having

additional children whom he cannot support, a task at which Oakley has wholly failed and for which he has been held criminally liable. The condition is narrowly drawn and is reasonably related to Oakley's rehabilitation and protection of the public.

¶16 The condition placed on Oakley falls between those approved in ***Krebs*** and ***State v. Garner***, 54 Wis. 2d 100, 105-06, 194 N.W.2d 649 (1972), where the court upheld as reasonable a condition of probation requiring payment of child support where the defendant had been convicted of failing to pay child support. These cases support our conclusion that Oakley's condition of probation is reasonable and not overly broad.

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.